

# LEASE

Between

DAVID E. AARONSON/GENERAL PARTNER  
Wheaton Shopping Center Joint Venture, Landlord

and

MONTGOMERY COUNTY, MARYLAND – TENANT

1. PARTIES: THIS LEASE AGREEMENT made in duplicate on the 17<sup>th</sup> day of June, 2000, by and between DAVID E. AARONSON, General Partner, for Wheaton Shopping Center Joint Venture, Landlord, (hereinafter referred to as "Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body Corporate and a political subdivision of the State of Maryland (hereinafter referred to as "Tenant").

2. PREMISES: The premises is known as 11405-11407 Georgia Avenue, Wheaton, Maryland 20902, being a one-story masonry building apart of the Wheaton Shopping Center, which space is hereinafter referred to as the "leased premises." The leased premises consist of two spaces: First, the "existing premises" known as 11407 Georgia Avenue, comprising approximately 2,100 square feet of space, currently occupied by Montgomery County, Maryland, as a liquor dispensary pursuant to a lease agreement between the parties dated February 9, 1996, for a term of five (5) years, commencing on July 1, 1995, and concluding on June 30, 2000. Second, the "new premises" known as 11405 Georgia Avenue, comprising approximately 1,550 square feet. The two spaces comprising the "lease premises" are approximately 3,650 square feet.

2a. LANDLORD'S IMPROVEMENTS: The Landlord has agreed to make certain improvements to 11405-11407 Georgia Avenue, as are set forth in the plans and specifications attached hereto as Addendum A, which are hereby incorporated by reference and made an express part of the lease. Upon the execution of this lease, Landlord shall as soon as reasonably possible apply for any necessary permits to begin Landlord's improvements. During this period, Tenant shall continue doing business at its existing premises, 11407 Georgia Avenue. When Landlord is ready to commence Landlord's improvements, Landlord or its architect shall notify tenant in writing. As soon thereafter as reasonably possible, but in no event more than thirty (30) days from date of such notice, Tenant will close its business and remove all Tenant improvements, including, but not limited to, Tenant's shelving, its office area, its inventory and other tenant improvements, including store fixtures, furniture, carpet, not needed for Landlord's work, and shall leave the premises in broom clean condition. Tenant shall notify Landlord when Tenant has completed its removal of the above items for Landlord and Tenant to do a "walk-

thru" of the premises. At the time of Landlord's substantial completion of Landlord's improvements, as set forth in paragraph 3(a), below, Landlord shall provide Tenant with an invoice setting forth its costs for that part of the Landlord's work to be reimbursed by Tenant, namely, the construction of the wall, and associated work, and a door, separating the selling space from the storage space in the rear of the leased premises. The Tenant will promptly reimburse the Landlord for this work. Also, Landlord, at Tenant's request, has provided plans for certain Tenant improvements, such as an Office for Tenant, which work is to be performed by Tenant at Tenant's own expense upon substantial completion of Landlord's improvements.

3. TERM: Five (5) years.

(a) The Lease shall commence on the 5<sup>th</sup> day of June 2000, and end five (5) years from the date of substantial completion of the Landlord's Improvements to 11405-11407 Georgia Avenue. A letter to Landlord and Tenant from Landlord's architect, Robert J. Glaser & Associates, P.A., 8701 Georgia Avenue, Suite 510, Silver Spring, Maryland 20910 (Telephone: 301-585-2260), certifying to the substantial completion of Landlord's Improvements shall fix the date of substantial completion for purposes of the term of the lease and changes in other obligations, including Tenant's obligation to pay rent. Upon substantial completion of Landlord's Improvements both the leased premises, consisting of the existing premises, 11407 Georgia Avenue, and the new premises, 11405 Georgia Avenue, shall be turned over to the Tenant, subject to any work that is the responsibility of Tenant.

(b) Upon the execution of this Lease Agreement, this lease agreement will supersede the aforementioned Lease Agreement between the parties for 11407 Georgia Avenue dated February 9, 1996. The aforementioned Lease Agreement will deemed to be canceled upon the execution of this Lease Agreement, except the parties will be fully liable and responsible for any outstanding obligations pursuant to the aforementioned Lease Agreement until the date of cancellation and any additional obligations imposed by this agreement. It is the intention of the parties that there be no interruption of rent for 11407 Georgia Avenue except as specifically set forth in this Lease Agreement.

4. RENTAL:

- (a) Tenant's minimum rental obligation during the period before substantial completion of Landlord's improvements and during the first year after substantial completion of the leased premises shall consist of (1) "initial rent," which begins with the commencement date of this lease and ends when "interim rent" begins; (2) "interim rent," which begins after Landlord obtains any necessary permits to undertake Landlord's Improvements, Tenant temporarily ceases doing business at 11407 Georgia Avenue, and temporarily returns the premises to the Landlord, after complying with the provisions of paragraph 2(a), above, for Landlord to undertake Landlord's improvements and ends when "regular rent" begins; and, (3) "regular rent," which begins upon the certification of Landlord's

Improvements as substantially complete by Landlord's architect, as set forth in paragraph 3(a), above. These rental obligations are set forth in this paragraph, *infra*. Rental obligations of Tenant during the remaining years of the lease also are set forth in this paragraph, *infra*.

Substantial completion of the Landlord's work will be achieved when the Landlord's Work shown on the plans of Robert J. Glaser & associates. Inc., dated 4/11/00, is certified complete by the architect. A few minor items may not be complete that will not affect the Tenant's work and will be noted in a "punch list" prepared by the architect and attached to his Certification. Prior to the architect's certification, the Landlord will obtain the required inspections for work as indicated on the aforementioned plans. However, due to the fact that the Tenant is going to be making its own improvements, inspections relative to the Tenant's improvements and the use and occupancy permit are the responsibility of the Tenant.

(b) During the first year of the lease, the base "initial rent" for the "existing premises," 11407 Georgia Avenue, shall be the same rent as Tenant is currently paying pursuant to the Lease Agreement executed between the parties dated February 9, 1996, and further identified in Paragraph 2, above, namely \$39,903.24 per annum or \$3,325.27 per month. There is no base "initial rent" or "interim rent" for the "new premises," 11405 Georgia Avenue, which Tenant will not occupy until the date of substantial completion of Landlord's Improvements, as set forth in paragraph 3(a), above. The base "interim rent" for the premises, 11407 Georgia Avenue, shall be fifty (50) per cent of the base "initial rent" for 11407 Georgia Avenue, or \$19,951.62 per annum or \$1662.64 per month. Landlord's improvements shall be substantially complete within ninety days of commencement of work, absent extraordinary circumstances beyond Landlord's control. The intention of the parties is that during the period of Landlord's improvements to the existing space, the base rent for this space shall be apportioned equally between the Landlord and the Tenant. The base "regular" rent shall be one and a half per cent (1 ½%) greater than the base "initial rent" for 11407 Georgia Avenue, namely, \$40,501.79 per annum or \$3,375.15 per month. In addition, Tenant will continue to pay the pass-throughs for 11407 Georgia Avenue from the lease commencement date. The base "regular" rent for 11405 Georgia Avenue shall be \$29,891.75 per annum or \$2,490.98 per month. The tenant will begin paying the pass-throughs for 11405 Georgia Avenue when it begins paying the base "regular" rent, namely at the time of substantial completion of Landlord's Improvements, as set forth in paragraph 3(a), above. The total base "regular" rent for the lease premises, consisting of 11405 and 11407 Georgia Avenue shall be \$70,393.54 per annum or \$5,866.13 per month. The base "regular rent" shall continue for one (1) year. Pass-throughs include Tenant's reimbursement to Landlord for Tenant's pro rata share of Landlord's property damage and liability insurance, as provided in paragraph 8, *infra*, reimbursement for Tenant's pro rate share of real estate taxes, as provided in paragraph 23, *infra*, and reimbursement for common area maintenance, as provided in paragraph 38, *infra*.

See Paragraph 4(c) for base rent in remaining lease years. All rents shall be paid as hereinafter provided at the office of the Landlord, to be paid in consecutive monthly installments in advance on the first day of each and every month of the term, with the exception that the first month's rental shall be paid upon the execution of this Lease.

(c) All amounts payable by Tenant under the terms of this Lease in addition to the basic rent, and any charge or expense on behalf of Tenant under the terms of this Lease incurred by Landlord, shall be considered additional rent hereunder. In addition to and not in limitation of any other rights and remedies which Landlord may have in case of the failure by Tenant to pay such sums when due, such non-payment shall entitle Landlord to the remedies available to it hereunder for non-payment of rent. All such charges or expenses shall be paid to Landlord or to its successor or at such other place and to such other person as Landlord may from time to time designate in writing. The covenant to pay rent shall be independent from all other covenants in this Lease.

(d) Increase of Rent - COST OF LIVING ADJUSTMENT:

(1) Effective one (1) year after date of substantial completion of Landlord's Improvements as set forth in paragraph 3(a), above, and each one year anniversary thereafter during the term of this lease the base or minimum annual rent (and the monthly installments thereof) shall be adjusted by increasing the minimum rent then in effect by an amount derived by multiplying the minimum rent then in effect by one hundred percent (100%) of the percentage increase in the Consumer Price Index (as hereinafter defined) between the Consumer Price Index published for the month one year prior to the date of such adjustment and the Consumer Price Index published for the month immediately preceding the date of such adjustment.

(2) For the purpose of this Lease, the "Consumer Price Index" is hereby defined to be the index now known as United States Department of Labor Bureau of Labor Statistics, Revised CPI-U (all items, U.S. City Average (1982-84 = 100)).

(3) Notwithstanding the foregoing, the resulting annual minimum rent calculated as above shall not be less than 3% nor more than 5% of the minimum rent payable during the previous lease year.

(4) In the event the said index is discontinued, ceases to incorporate a significant number of the items now incorporated therein, or if a substantial change is made in such index, the parties shall attempt to agree on an alternate formula in accordance with such statistics as may be recommended by a department or, agency of the United States Government for such purposes, or absent such a recommendation, in such manner as may be reasonably determined by agreement of Lessor and Lessee.

(e) Payment of Rent: Tenant will pay said rent at times specified without demand, set off or deduction to the offices of David Aaronson, Aaronson & Aaronson, Managing Agent,

5100 Wisconsin Avenue, N.W., Suite 302, Washington, D.C. 20016 or at such other address as may in the future be designated by the Landlord.

4a                    SECURITY DEPOSIT: INTENTIONALLY LEFT BLANK.

5.                    USE OF PREMISES:

(a) Tenant warrants and agrees that the leased premises shall be used as a retail liquor store and for no other purpose whatsoever. Tenant agrees to exercise its judgment, in its sole and absolute discretion, to minimize direct competition, especially in the sale of beer, with two other beer and wine stores in the Wheaton Shopping Center, namely the "Wheaton Deli" at 11413-11415 Georgia Avenue and "Party Time Beer & Wine" at 11443 Georgia Avenue.

(b) Tenant will not use or permit the leased Premises or any part thereof to be used for any disorderly, unlawful or extra hazardous purpose nor for any other purpose than herein before specified

(c) Tenant shall apply for and obtain all necessary permits and licenses for its business and will comply with all requirements of any and all permits, licenses, occupancy permits and the like, required to permit Tenant to occupy the Leased Premises, all at Tenant's sole expense, except that Landlord will apply at Landlord's expense for any permits necessary for Landlord to undertake "Landlord Improvements" as set forth in the plans and specifications attached hereto as Addendum A, as set forth in paragraph 2(a), above.

6.                    UTILITIES:

(a) Tenant agrees to pay all bills for electricity, gas, fuel, power, water, sewer use, trash removal, telephone, and all other utilities as the same become due. In no event shall Landlord be liable for any interruption or failure in the supply of any utilities to the leased premises.

(b) Tenant will repair all leaks of water lines, pipes, faucets and sump pump within the premises leased by Tenant. Tenant will not waste any water and will follow good water conservation practices.

7.                    GLASS PANE REPLACEMENT: Tenant, at Tenant's sole cost and expense, agrees to promptly replace any window or door glass pane that is broken, chipped or cracked, not as a result of structural failure or Lessor's negligence. Should the Tenant fail to effect a replacement within a reasonable period of time, the Landlord may perform this work and the Tenant shall reimburse Landlord for the cost thereof, as additional rent.

8.                    PROPERTY DAMAGE AND LIABILITY INSURANCE:

(a) Tenant agrees to maintain and pay for public liability insurance with bodily injury limits of ~~One Million Dollars (\$1,000,000.00)~~ <sup>Two Hundred Thousand \$200,000.00</sup> per individual and ~~One Million Dollars (\$1,000,000.00)~~ <sup>Five Hundred Thousand \$500,000.00</sup> aggregate and property damage limits of Five Hundred Thousand Dollars (\$500,000.00) protecting Tenant and Landlord and his Agents against liability for any accident, injury, or damage on the premises, or caused by the same, and to furnish Landlord with a copy of such insurance policy within thirty (30) days from the date of execution of the Lease. Tenant reserves the right to self insure the above risk to which the landlord consents.

~~(b) The Tenant agrees to pay as additional rent hereunder a sum equal to Tenant's proportionate share of the cost of insurance premiums payable by the Landlord fire extended coverage and excess liability. The Tenant's proportionate share shall be the prorate share of the Tenant's Premises in relation to the total square footage of the gross leasable area, which the parties hereto agree to the amount of 7.628% (11405 is 3.278% and 11407 is 4.350% or a total of 7.628%). A copy of the Insurance Premium statement or bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of insurance premiums payable by the Landlord. Tenant will pay its proportionate share within thirty (30) days of billing by the Lessor. If the operation of this provision results in payment of Tenant's proportionate share of insurance premiums for a year extending beyond the term of the Lease, Landlord, within thirty (30) days following the expiration of the term of this Lease, shall reimburse Tenant for any such amount, less amounts then due Landlord from the Tenant.~~

(c) The Tenant agrees to do nothing and to permit nothing to be done on the premises which will contravene any fire insurance policy covering the same. If Tenant's use or occupancy of the premises, or his act or omission or any act or omission permitted by him increases the premium of any insurance policy, Tenant shall be responsible for such increase.

(d) Tenant agrees that all equipment, trade fixtures or personal property in the leased premises shall be and remain at Tenant's sole risk, and Landlord shall not be liable for any damage to or loss of such equipment, trade fixtures or personal property arising out of the acts or omissions of the Tenant, Tenant's agents, servants and employees.

9. FIRE EXTINGUISHER: The Tenant shall be obligated to supply and maintain, at its own cost and expense, any fire extinguisher, or other fire prevention equipment required by law, rules, orders, ordinances, regulations and/or recommendations of the City, County, State, Rating Bureau or Underwriters Association having jurisdiction in the area in which the leased premises are located.

10. SAVE HARMLESS: Tenant agrees to indemnify and save Landlord and his Agents harmless and defend them from and against all loss, damages or claims of whatever nature arising solely from any negligent act or omission by Tenant, or Tenant's contractors,

licensees, agents, servants or employees. This indemnification is subject to the liability and damage caps stated in the Local Government Tort Claims Act in the Maryland Code as amended from time to time. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any rights or causes of action in third parties.

11. STRUCTURAL ALTERATIONS: The Tenant agrees not to make any structural alterations or additions without the prior consent of the Landlord, and to pay for all such alterations or additions. It is the intent of the parties hereto and is understood and agreed that upon termination of the tenancy, the Landlord shall have the option to require the Tenant to remove alterations and additions made by the Tenant, and/or any predecessor(s) of the Tenant, (including the removal of signs) and restore the premises to "vanilla shell" condition, or that the alterations and improvements, or any part thereof, made by the Tenant and/or Tenant's predecessor(s), shall remain as a part of the said premises. Otherwise, this property is to be removed by the Tenant at the end of the tenancy and the premises is to be restored to "vanilla shell" condition. In the event any damage is done to said premises in the installation or removal of said alterations or additions, Tenant will immediately make such repairs as are necessary to restore said premises to their original condition, or promptly reimburse the Landlord for the cost of such repairs. At inception of lease Landlord will promptly approve permit plans so long as they do not adversely effect the Wheaton Shopping Center.

12. REGULATIONS AND ORDINANCES: The Tenant agrees to comply with all applicable laws, ordinances, rules and regulations, and to abide by all rules, regulations, and stipulations of the Landlord which are necessary or advisable for the safety, care, protection, or cleanliness of the premises.

13. SUBORDINATION: The Tenant agrees that this Lease is and shall remain subject and subordinate to all present and future mortgages and deeds of trust affecting said premises, as well as all covenants and restrictions of record. Tenant agrees to execute, on demand, appropriate papers to effectuate the provisions of this paragraph, within the limitations imposed by law on the Tenant's ability to do so. Tenant shall be entitled to a non-disturbance agreement from any new lender.

14. SIGNS: The Tenant shall, at its own cost and expense, provide a suitable identification sign of such size, design and character as Landlord shall first approve in writing, and shall install the same at a place or places designated by Landlord. Tenant shall maintain, at its own cost and expense, any such sign or other installation in good condition and repair. The Tenant agrees not to place any signs, advertisements, or notices on the exterior of any wall, window, or door of the building without the Landlord's prior consent, and agrees to comply with all municipal ordinances pertaining to the erection of signs. Landlord shall have the right, with or without notice to Tenant, to remove any signs installed by Tenant in violation of this paragraph and to charge Tenant for the cost of such removal and/or repairs necessitated thereby. The placement of any and all signage on the property shall be within the exclusive control and discretion of the Landlord.

The Tenant's exterior sign shall be blue with white lettering with a black opaque background. The color of the blue in the sign must conform to all other approved blue signs at Wheaton Shopping Center. Tenant must submit a written proposal to Landlord with its proposed sign criteria and specification set forth in detail for Landlord to review prior to ordering, fabrication and installation. Landlord shall respond to Tenant's signage request within ten (10) business days of the date Landlord receives Tenant's signage proposal. If Landlord rejects Tenant's sign proposal, Landlord shall specify the basis for any such rejection, in writing, to the Tenant.

15. INTENTIONALLY LEFT BLANK.

16. SURRENDER AND HOLDING OVER: Tenant, upon expiration or termination of this Lease, either by lapse of time or otherwise, shall peaceably render to Landlord the premises in broom-clean condition and in good repair. At the same time, the Tenant agrees to surrender all equipment of the Landlord in good, clean and operating condition, ordinary wear and tear excepted. In the event that Tenant shall hold over after the expiration of this Lease or intend to vacate at the expiration of the initial or any extension thereof, the tenancy created by such holding over shall be a month to month tenancy, but in all other respects shall be governed by the terms of this Lease, provided, however, that in all cases a thirty (30) day notice shall be required to terminate the tenancy created by such hold-over, or at the expiration of the Lease or any extension thereof.

17. DAMAGE BY FIRE, ETC.: If the Leased Premises shall be damaged by fire, the elements, or unavoidable accident, but are not thereby rendered untenable in whole or in part, Landlord shall, at its own expense, cause such damage to be repaired and the rent shall not be abated. If by reason of such occurrence the premises shall be rendered untenable only in part, Landlord shall, at its own expense, cause the damage to be repaired, and the fixed rent meanwhile shall be abated proportionately as to the portion of the premises rendered untenable. If the premises shall be rendered wholly untenable by reason of such occurrence, the Landlord shall, at its own expense, cause such damage to be repaired, and the fixed rent meanwhile shall abate until the Leased Premises have been restored and rendered tenable, or Landlord may, at its election, terminate this Lease and the tenancy hereby created by giving to Tenant within the sixty (60) days following the date of said occurrence, written notice of Landlord's election so to do and in event of such termination, rent shall be adjusted as of the date of such occurrence. Landlord agrees to commence repairs where required within a reasonable period of time. If the Landlord restores the premises, this Lease shall continue in force and effect. If the premises are rendered wholly untenable, the Tenant will also have the right to terminate the tenancy by giving the Landlord sixty (60) days written notice following the date of the occurrence.

18. EQUIPMENT: It is understood and agreed that the Tenant accepts the premises and the equipment installed therein, and heating and air-conditioning equipment, plumbing, mechanical and sump pump and electrical, in "as is" condition, subject to the



provisions of paragraph 25, infra.

19. REPAIRS:

(a) Maintenance by Landlord: Landlord shall make all necessary repairs during the term of this lease or any extension thereof, to the roof of the building of which the leased premises are a part, and all necessary structural repairs to the exterior walls and foundations of the building of which the leased premises are a part excluding doors, locks, door jams, windows, and glass, except for necessary structural repairs caused solely by the act or negligence of Tenant, its agent, invitees, customers or employees. Landlord shall not be liable to make any other improvements or repairs of any kind upon said building, except structural and roof as herein setforth. Tenant shall be required to give Landlord written notice of repairs that are required to be made by Landlord and Landlord shall be given a reasonable opportunity to make said repairs.

(b) Tenant, at its sole expense, shall, at all times, keep the Leased Premises, including exterior entrances, all glass and show window moldings, all partitions, doors, fixtures, equipment and appurtenances thereof in good condition and repair, and also in a clean, sanitary, and safe condition in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officers of the governmental agencies having jurisdiction. Tenant shall comply with all requirements of law, ordinances and otherwise, affecting the Leased Premises; and shall permit no waste, damage or injury to said premises. Tenant shall, at its own cost and expense, maintain and repair all mechanical, plumbing, sump pump, electrical, heating and air-conditioning equipment. Tenant shall replace plumbing, sump pump, mechanical, electrical, heating and air-conditioning equipment if the same cannot be repaired. Tenant shall also replace any broken or cracked glass windows, doors, locks, and door jams in the premises. Tenant shall maintain the sidewalks immediately abutting the leased premises, both in front and in back, keeping them free from obstruction of any nature, properly swept and free of snow and ice; however, Landlord shall be responsible for repairs to the sidewalk.

20. CARE OF PREMISES: The Tenant shall not perform any acts or carry on any practices which may damage said building or be a nuisance or menace to other tenants. Tenant shall keep Leased Premises under its control including the sidewalks adjacent to said premises, clean at all times and shall store trash and garbage within said premises and arrange for the regular pick-up of such trash and garbage at Tenant's expense. Tenant agrees that it will at its own cost and expense removed from the leased premises all refuse and waste material of whatever kind which results from the operation of the Tenant's business, such removal to be as frequent as necessary to maintain the premises in a clean and sanitary condition. Tenant shall not burn any trash or garbage of any kind in or about said premises. Tenant shall keep all walking and adjacent areas, both in front and in back of the premises, properly swept and free of snow, ice, and debris. At the request of Landlord, the Tenant shall provide at its expense metal dumpsters for the storage of trash and debris.

21. RIGHT TO ENTER: The Landlord shall have the right to enter the premises at all reasonable hours to examine the same as well as to make any alterations and repairs to the premises or to contiguous premises. During the last four (4) months preceding the termination of this Lease, the Landlord shall have the right to enter the premises at reasonable hours to exhibit the same for rental, and to display "For Rent" signs in the premises unless the parties are in negotiation to renew. In case the premises are deserted or vacated, Landlord shall have the right to enter by any legal means and to re-rent the premises, apply the income to the payment of rent due under this Lease, and hold the Tenant liable for any deficiencies.

22. CONDEMNATION: If the whole or part of the premises are taken for a public or semi-public use, by condemnation or conveyance in lieu of condemnation, then the rent shall be decreased in proportion to the portion of the premises so taken. If such taking renders the premises untenable, this Lease shall thereupon terminate. All proceeds paid for any such taking shall belong to the Landlord. Tenant may make its own claim for its damages.

23. REAL ESTATE TAXES:

(a) Commencing on the rent commencement date as determined elsewhere in this lease agreement, the Tenant agrees to pay as additional rent hereunder a sum equal to Tenant's proportionate share of all real estate taxes which may be levied or assessed by lawful taxing authorities against the land, buildings and all improvements in the Shopping Center as it relates to the premises leased herein. Tenant will pay such taxes within thirty (30) days billing to the Lessor.

(b) "Real Estate Taxes" shall be deemed to mean all city, county, town and village taxes, special or general, ordinary or extra-ordinary, assessments, excises, levies, and other governmental charges which shall be imposed upon or become due and payable, or become a lien upon the premises or any part thereof by any federal, state, municipal or other governmental or public authority under existing law, or practice, or under any future law or practice, and costs and expenses incurred in contesting or negotiating an adjustment thereof. The real estate taxes for any calendar year shall mean the real estate taxes actually paid or due to be paid during such calendar year, whether or not such real estate taxes related to such calendar year or a fiscal year.  
Provided that the taxes relate to the period of time that this lease was in effect.

(c) Tenant's liability for Tenant's proportionate share of real estate taxes and assessments for the calendar year during which this Lease commences and terminates shall in all events be subject to a pro-rata adjustment based on the number of days of said calendar year during which the term of this Lease is in effect, and is subject to the provisions of paragraph 4(a) relating to commencement of pass-throughs. Tenant's proportionate share of real estate taxes shall be determined for each calendar year by multiplying the real estate taxes for such calendar year by a fraction, the numerator of which shall be the floor area of the premises, and the

denominator of which shall be the floor area of all the rentable space available in the entire rentable space in the Wheaton Shopping Center in which the leased premises are located. Landlord and Tenant agree that Tenant's pro-rata share of said real estate taxes for the building is 4.350% for 11407 Georgia Avenue and 3.278% for 11405 Georgia Avenue, or a total of 7.628% of the leased premises.

(d) If the operation of any foregoing provisions results in payment of Tenant's proportionate share of real estate taxes for a calendar year extending beyond the term of this Lease, Landlord, within thirty (30) days following the expiration of the term of this Lease, shall reimburse Tenant for any such amount, less amounts then due Landlord from the Tenant.

(e) A copy of the tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of taxes and/or assessments assessed or levied against the property to which such bill relates. Landlord's and Tenant's obligations under this paragraph shall survive the expiration of the term of this Lease.

(f) In the event that any present or future enactment of any state or political subdivision thereof or any governmental authority having jurisdiction thereover: (a) imposes a tax and/or assessment of any kind or nature upon, against or with respect to rents payable by tenants in the Shopping Center to Landlord derived from the Shopping Center or with respect to the Landlord's (or Lessor's) ownership of the land and improvements comprising the Shopping Center, either by way of substitution for all or any part of the taxes or assessments levied or assessed against such land and such improvements, or in addition thereto; and/or (b) imposes a tax or surcharge of any kind or nature, upon, against or with respect to the parking areas or the number of parking spaces in the Shopping Center, such tax, assessment and/or surcharge shall be deemed to constitute real estate taxes for the purpose of this Article Eight and Tenant shall be obligated to pay its' proportionate share thereof. Provided Tenant shall not be liable for any taxes on the income of Landlord.

24. ASSIGNMENT AND SUBLETTING:

(a) By agreement of the Landlord with the consent of the Tenant the leased premises or any part thereof shall not be assignable or sub-leasable. The Tenant shall have the right to change the use of the premises so long as the substituted use is a County owned retail business, does not directly compete with any existing tenants of the Landlord at the Wheaton Shopping Center at the time of the change and is done with the written consent of the Landlord first obtained .

25. CONDITION OF PREMISES: That the tenant agrees to accept the premises known as 11405 Georgia Avenue in as is condition, except at the inception of the lease that the HVAC system shall be in operating condition as setforth in a written certification from a properly licensed HVAC contractor with a copy of the certification given to the Tenant. The

premises known as 11407 Georgia Avenue and related changes to 11405 Georgia Avenue shall be renovated to the specifications previously agreed upon by the Landlord and Tenant, which plans and specifications are set forth Addendum A, attached hereto, incorporated by reference and made a part of this Lease Agreement.

26. BROKERAGE:

(a) The Tenant and Landlord represent to each other that no licensed real estate broker or salesperson was in any way involved with the procurement or execution of this lease agreement, and each will hold the other harmless from any claims of others to the contrary.

27. OPTION: INTENTIONALLY LEFT BLANK

28. WAIVER: Any waiver of a default hereunder shall not be deemed a waiver of any subsequent default.

29. DEFAULTS AND REMEDIES:

It is agreed that if:

(a) Tenant shall fail to pay the rent or any installment thereof as aforesaid at the time the same shall become due and payable and/or any additional rent as herein provided although no demand shall have been made for the same, notice to quit being expressly waived in the event of Tenant's default; except that Landlord agrees to give tenant one fifteen(15) day written notice of rental default in any given 12 month period of the lease term, or

(b) Tenant shall violate or fail or neglect to keep and perform any of the covenants, conditions and agreements herein contained on the part of Tenant to be kept and performed; or

(c) The Leased Premises shall become vacant or deserted by Tenant, whether or not rent is in default; or

(d) There be any attachment, execution or other judicial seizure of all or a substantial part of the assets of Tenant or Tenant's leasehold; then, and in each and every event from thenceforth, and at all times thereafter, at the option of Landlord, Tenant's right of possession shall thereupon cease and terminate, and Landlord shall be entitled to possession of the Leased Premises and to re-enter the same without demand of rent or demand of possession of the Leased Premises and may forthwith proceed to recover possession of the Leased Premises by process of law, any notice to quit or of intention to re-enter the same being hereby expressly waived by Tenant; Tenant does further waive any stay of execution and agrees that the proper writ of process shall forthwith issue on any judgment. In the event of such re-entry by process of law or otherwise, Tenant nevertheless agrees to remain answerable for any and all damage,

deficiency or loss of rent which Landlord may sustain by such re-entry; and in such case, Landlord shall have full power, which is hereby acceded to by Tenant, to re-rent the Leased Premises for and on Tenant's behalf, and upon such re-renting, Landlord shall have the right each month to sue for and recover any loss of rents or monthly deficits, with the right reserved by Landlord to bring any action(s) or proceeding(s) for the recovery of any deficits remaining unpaid without being obligated to await the end of the term of this Lease for a final determination of Tenant's account, and the commencement or maintenance of any one or more actions shall not bar Landlord from bringing other or subsequent actions for further accruals pursuant to provisions of this paragraph. Any such re-renting may be for a term or terms equal to, less, or greater than the remaining term hereunder, provided the Tenant shall not be liable for any deficiency in rent for any part of the term of such re-renting beyond the term of this Lease, and Landlord shall be entitled to collect the rent accruing under such re-renting and to apply the same first to the balance of the deficiency in accrued rent under this Lease, and by successive suits recover any remaining deficiency from the Tenant. All remedies granted in this paragraph or otherwise provided by law shall be cumulative and, unless inconsistent, may be exercised separately or concurrently, or successively.

If, under the provisions of this Lease a summons or other applicable summary process shall be served pursuant to the laws of the State in which the Leased Premises are located, and a compromise settlement thereof shall be made, it shall not be constituted as a waiver of any breach of any covenant, condition or agreement herein contained and no waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenant, condition or agreement itself, or of any subsequent breach thereof. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

30. PERSISTENT FAILURE TO COMPLY WITH LEASE REQUIREMENTS: In addition to any other remedies available to Landlord pursuant to this Lease or by law, Landlord may, at any time throughout the term of this Lease, terminate this Lease upon Tenant's default on three (3) separate occasions during any twelve (12) month period of any one or more provisions of this Lease, regardless of whether or not such subsequent defaults have been cured. Termination, pursuant to paragraph 29, shall be effective upon Landlord's delivery to Tenant of a Notice of Termination.

31. DISTRAINT: Intentionally deleted:.

32. PRIOR OCCUPANCY: If on the date of this Lease another person is occupying the premises and Landlord is unable to obtain possession on or before the

A handwritten signature in black ink, appearing to be 'WM' followed by a stylized flourish.

commencement of the term of this Lease, Tenant's right of possession hereunder shall be postponed until said premises are vacated by such other person, and rent due hereunder shall be abated at the rate of one-thirtieth of a monthly installment for each day that possession is postponed. Neither Landlord nor his agent shall be liable in damages for any such postponement.

33. HEIRS AND ASSIGNS: This Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, and assigns.

34. PARKING AND DRIVEWAY AREAS: It is mutually agreed that the Leased Premises is one of a group, and should the Landlord provide any parking spaces for the use of the general public or customers of the entire group of properties, the Tenant will obtain no right of interest in or to the parking areas or spaces or driveways, and the Landlord will retain the right to make such reasonable rules and regulations concerning the use, maintenance, and operation of the parking areas or spaces or driveways as in the judgment of the Landlord is for the benefit of the public or the tenants and customers of all tenants in this group. It is agreed and understood that the parking presently available for customer use shall not be used by the Tenant, Tenant's employees, agents or contractors, except for brief short-term parking limited to the time period necessary to make deliveries or perform maintenance and the like. Tenant agrees to use its best effort to notify its employees and agents of this restriction and to take reasonable measures to ensure that their employees and agents do not park in Wheaton Shopping Center property. Tenant shall inform employees of alternative parking, such as on the public streets, and on the public Montgomery Country parking lot in the rear of the premises. Landlord has the absolute right and discretion to alter or modify any existing parking and driveway areas or other common areas. Landlord shall be responsible for repair, ongoing maintenance, upkeep and cleaning of parking areas, including ice and snow removal.

Any right the Tenant has earned, as the result of a course of conduct over the years, to the use of one parking space on the lot behind Barnaby's Restaurant, may continue to be used and enjoyed. However, the Landlord reserves the right to terminate this utilization by giving to the Tenant thirty (30) days written notice that its use and occupancy of that space may no longer be had and that the Tenant must park its vehicles off the property owned and managed by the Landlord. Nothing in this paragraph shall be interpreted to preclude the parking of vehicles in front or in the rear while engaged in loading or unloading.

35. LATE CHARGE: A late charge of Five Percent (5%) of the monthly rent and additional rent due shall be assessed against the Tenant if the monthly rental is not received within Fifteen (15) days after the rent is due. Said charge shall constitute additional rent.

36. WAIVER OF JURY TRIAL: Should any controversy arise by and between the parties concerning any of the terms and conditions contained in this Lease, or the payment of any monies due hereunder, each of the parties hereby waives its right to a jury trial and freely elects

to be tried by any court of competent jurisdiction without a jury. That in addition thereto, each of the parties hereto agrees that neither shall demand or claim the right to have a jury trial and acknowledges that if such demand is made, it is made for purposes of delay and is without justification.

37. SIGN REPLACEMENT:

The Tenant agrees that if the Landlord remodels the facade of the Shopping Center of which the leased space is a portion during the term of this Lease, the Tenant will, at its own expense, upon written request of the Landlord, within sixty (60) days, agree to conform any exterior signage to the format proposed by the Landlord, with amount or area of signage that the Tenant shall be entitled to be proportionate to the Tenant's space as to the entire improved area of the Shopping Center, in accordance with the then existing local, county, and state regulations only once during the original lease term set forth in this lease. This provision of this paragraph may not be enforce more than once during the five year term of the lease and not within two years of when the Tenant installs it sign at the inception of the lease..

38. COMMON AREA MAINTENANCE (CAM)CHARGE: Tenant shall pay as additional rent, on a monthly basis, the sum of One Dollar and No Cents (\$1.00) per square foot of space leased in the Wheaton Shopping Center. This agreed upon sum will be in lieu of the Landlord having to supply to the Tenant any documentation of the maintenance costs for the common areas of Wheaton Shopping Center. The CAM charge shall escalate at the rate of two Percent (2%) per annum on the anniversary of the Lease Commencement date. See paragraph 2, above, for agreed upon square footage of the leased premises.

39. Intentionally Deleted.

40. The Tenant hereby expressly agrees that Landlord shall not be responsible in any manner for any damage or injury to the person or property of Tenant or any other person or business directly or indirectly caused by dampness or water, whether due to a break or leak in any part of the roof, heating, or plumbing within the premises, or in the building in which the premises are located or the adjoining building, no matter how caused, or any other cause whatsoever.

41. LIENS: Tenant expressly covenants and agrees that it will, during the term hereof, promptly remove or release, by the posting of a bond or otherwise, as required or permitted by law, any lien attached to said premises by reason of any act or omission on the part of Tenant, and hereby expressly agrees to save and hold harmless the Landlord from and against any such lien or claim of lien. In the event any such lien does attach, or any claim of lien is made against said premises, by reason of any act or omission upon the part of Tenant, and the said lien is not released within sixty (60) days after notice thereof, Landlord, in its sole discretion (but nothing herein contained shall be construed as requiring it to do so), may pay and discharge the said lien and relieve the said premises from any such lien, and Tenant agrees to pay and

reimburse Landlord upon demand for or on account of any expense which may be incurred by Landlord in discharging such lien or claim, which sum shall include the maximum legal interest rate per annum from the date such lien is paid by Landlord until the date Landlord is reimbursed by Tenant. Payment of such lien shall not be construed as an admission of liability or responsibility to any third party.

42. In no event shall the Tenant withhold, deduct, or offset the payment of the monthly rental or any part thereof with respect to any provisions of this Lease. If the Landlord shall be in breach or default of any obligations hereunder, the Tenant agrees to look for satisfaction solely by filing separate legal action against the Landlord or his assigns, which shall not be a defense against the payment of the aforesaid rental.

43. The tenant shall be responsible for complying with all obligations of the Americans With Disability Act at their sole expense and effort whether occurring at the inception of the lease or during the term of the lease.

44. NOTICES: All notices required pursuant to this Lease are to be directed in writing by hand, certified mail, fax or personal delivery:

TENANT: Montgomery County, Maryland  
Department of Facilities & Services  
Office of Real Estate Management  
110 North Washington Street, Room 318  
Rockville, Maryland 20850-2299

LANDLORD: David E. Aaronson  
Wheaton Shopping Center Joint Venture, a Partnership  
5100 Wisconsin Avenue, N.W., Suite 302  
Washington, D.C. 20016

AND

Ronald G. Kane, Esquire  
11029 Rosemont Drive  
Rockville, Maryland 20852

45. ENVIRONMENTAL:

A. Prohibitions. Tenant shall prevent any section 40(A-C) Hazardous Materials and Emanations from being used, generated, stored, or disposed on, under, or about, or transported to or from the Premises or building, other than small quantities of retail, household, or office chemicals that are (a) customarily sold over-the-counter to the public and (b) directly related to the Section 5 permitted use.

B. Corrective Action. If any violation of section 8(1) Prohibitions occurs,



Tenant shall promptly (a) notify Landlord by telephone and in writing and (b) remove, clean-up, dispose of, remedy, or stop and Hazardous Materials or Emanations.

- C. Hazardous Materials and Emanations. "Hazardous Materials or Emanations" include but are not limited to any pollutant, contaminant, toxic or hazardous waste, dangerous material, potential dangerous material, noxious material, toxic material, flammable, explosive, radioactive material, including but not limited to biological or medical waste, mercury, lead, urea form aldehyde, asbestos, PCB's, X-rays, micro-waves, electromagnetic field or other material or emanation, whose use or mere ownership is restricted, prohibited, regulated, or penalized by any or all federal, state, county, district, commission or municipal statute, laws, or regulation now or at any time hereafter in effect, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, the Hazardous Materials Transportation Act, the Federal Water pollution Control Act, the Clean Air Act, The Toxic Substance Control Act, and the Occupational Safety and Health Act, as these laws have been amended or supplemented.
- D. Cooperation. At Landlord's request, Tenant shall truthfully complete any questionnaires and fully cooperate with any inspections or testing including but not limited to removal of samples. All questionnaires, testing, and samples shall relate to the use or presence of Hazardous Materials or Emanations. If requested, Tenant shall provide Landlord with copies of Tenant's Material Safety Data Sheets.

46. ROOF REPAIRS: The Tenant shall not make any changes and/or repairs to the roof of the premises without the express written permission of the Landlord. The Landlord shall have the right to require the Tenant to use a roofer designated by the Landlord in order to make any changes and/or repairs to the roof of the premises.

47. STATUS OF PERFORMANCE:

(A) Recognizing that both parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, either party, on the written request of one to the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this lease.

(B) Without limiting the generality of the foregoing, the Lessee and Lessor specifically agree, that at any time within ten (10) days after such a request is made, the Lessee or Lessor shall execute, acknowledge and deliver to the other a certificate evidencing whether or

not:

1. This lease is in full force and effect;
2. This lease has been amended in any way;
3. There are any existing defaults hereunder to the knowledge of either party, and specifying the nature of such defaults, if any; and
4. The date to which rent has been paid.

(C) Lessor and Lessee agree that this lease shall not be recorded but that, upon request by either party, a short form lease of even date herewith, shall be executed and recorded in accordance with the laws governing and regulating recording of such documents in the state in which the leased premises are located, at the expense of the requesting party.

48. STATUTORY PROVISIONS: It is understood, agreed and covenanted by and between the parties hereto that Lessor and Lessee, as their interests may appear and at their respective expense, shall promptly comply with, observe and perform all of the requirements of all statutes, ordinances, rules, orders and regulations now in effect or hereinafter promulgated whether required by the Federal Government, State of Maryland, Montgomery County Government or Montgomery County Fire Marshal's Office.

49. FORCE MAJEURE: Any thing in this lease to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of either party, neither party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this lease if the same shall be due to any strike, lockout, civil commotion, governmental regulations or controls, inability to obtain any material, service or financing, or through any Act of God or other cause beyond the control of either party.

50. GENERAL PROVISIONS:

(A) It is further understood and agreed, that this instrument contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties hereto, and that the conditions and agreements herein are binding on, and may be legally enforced by the parties hereto, their executors, administrators, successors and assigns, respectively, and that no waiver of any breach of any condition or agreement contained herein shall be construed to be a waiver of that condition or agreement or of any subsequent breach thereof, or of this agreement.

(B) Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number in any place herein in which the context may require such a substitution.

(C) If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be



affected thereby.

51. NON-DISCRIMINATION: Landlord agrees to comply with the non-discrimination in employment policies in County contracts as required by Sections 27-16A et seq. and section 27-17 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the County that in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of the race, color, religion creed, ancestry, national origin, age, sex, marital status, handicap, or sexual orientation of any individual.

52. CONTRACT SOLICITATION: Landlord represents that it has not retained anyone to solicit or secure this lease from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling or leasing agencies maintained by the Landlord for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

53. PUBLIC EMPLOYMENT: Landlord understands that unless authorized under Section 11B-52 or Chapter 19A of the Montgomery County Code 1994, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

54. NON-APPROPRIATION: This Lease is subject to the appropriation of funds. If funds are not appropriated, for any reason whatsoever, the Lease will automatically terminate on the next anniversary date of such year, being defined as midnight June 30<sup>th</sup>. Tenant, however, shall give Landlord at least forty-four (44) days prior written notice of the lack of appropriation. If this Lease is canceled by the Tenant because non-appropriation of funds or other permitted reasons not resulting from a default by Landlord, Tenant shall promptly reimburse Landlord for Landlord's actual cost of Landlord's work, as identified in Addendum A, attached to and made apart of this Lease, according to the following schedule: (1) during the first two years, Tenant shall refund 100% of Landlord's costs; during years three and four, 50% of Landlord's costs; and, during the 5<sup>th</sup> year, 25% of Landlord's costs. Landlord shall provide Tenant with an invoice, with appropriate documentation, of the cost of Landlord's work.

55. DEMOLITION CLAUSE: It is covenanted and agreed between the parties hereto that in the event that Landlord or their Assignees, desire to demolish or substantially make alterations to that section of the Wheaton Shopping Center, including premises 11405-11407 Georgia Avenue, Wheaton, Maryland, the Landlord or their Assignees, shall have the right to terminate this lease, upon giving the Tenant twelve (12) months' written notice by certified or registered mail, at which time this lease shall be mutually terminated.

56. LANDLORD NOT A PARTNER: It is expressly understood that the Landlord shall not be construed or held to be a partner or association of the Tenant in the conduct of the Tenant's